

APR 27 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE ALFREDO BAUTISTA; ROSA
IMELDA BAUTISTA,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-72749

Agency Nos. A079-529-288
A079-529-289

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 13, 2009**

Before: GRABER, GOULD, and BEA, Circuit Judges.

Jose Alfredo Bautista and Rosa Imelda Bautista, husband and wife and
natives and citizens of Mexico, petition pro se for review of the Board of
Immigration Appeals (“BIA”) order denying their motion to reopen removal

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

proceedings. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the BIA's denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen as untimely because the motion was filed over seven months after the BIA's August 5, 2005 order, *see* 8 C.F.R. § 1003.2(c)(2) (motion to reopen must generally be filed within 90 days of the final order), and petitioners did not establish that they were entitled to equitable tolling, *see Iturribarria*, 321 F.3d at 897 (deadline for filing a motion to reopen can be equitably tolled "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence").

PETITION FOR REVIEW DENIED.